

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		1322/49/2	
<p>*Express Mail* mailing number: <u>ER530238265US</u> I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450</p> <p>on <u>1/27/06</u></p> <p>Signature <u>[Signature]</u></p> <p>Typed or printed name <u>Shaylor E. Dunn</u></p>		Application Number <u>09/770,316</u>	Filed <u>January 26, 2001</u>
		First Named Inventor <u>Dan Alan Brendes</u>	
		Art Unit <u>2142</u>	Examiner <u>Le, Hieu C.</u>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,085</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		<p><u>[Signature]</u> Signature <u>Gregory A. Hunt</u> Typed or printed name <u>(919) 493-8000</u> Telephone number <u>1-27-06</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

“Express Mail” mailing number: ER530238265038
Date of Deposit January 27, 20065
I hereby certify that this correspondence is being deposited with the
United States Postal Service “Express Mail Post Office to Addressee”
service under 37 C.F.R. 1.10 on the date indicated above and is
addressed to the Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450.

Shaylor E. Dunn

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Brendes et al.

Group Art Unit: 2142

Serial No.: 09/770,316

Examiner: Hieu C. Le

Filed: January 26, 2001

Docket No.: 1322/49/2

Confirmation No.: 7530

For: METHODS AND SYSTEMS FOR PROVIDING CONVERGED NETWORK
MANAGEMENT FUNCTIONALITY IN A GATEWAY ROUTING NODE

APPLICANTS' STATEMENT IN SUPPORT OF THE
PRE-APPEAL BRIEF REQUEST FOR REVIEW

INTRODUCTION

Claims 1, 2, 14, 15, 44, 47-49, and 55 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,870,565 to Glitho (hereinafter, “Glitho”) in view of U.S. Patent No. 6,731,741 to Fourcand (hereinafter, “Fourcand”). Reversal of this rejection is respectfully requested for the reasons set forth below.

A Response under 37 C.F.R. § 1.116 and a Supplemental Declaration under 37 C.F.R. § 1.131 are being filed concurrently herewith and are hereby incorporated herein by reference in their entirety.

Supplemental Declaration under 37 C.F.R. § 1.131

In the Official Action dated July 27, 2005, the Declaration under 37 C.F.R. § 1.131 filed on April 7, 2005 was found to be defective because the Official Action indicated that the Declaration presented no evidence supporting the assertion of due diligence in reducing the invention to practice. Applicants respectfully disagree and note that in paragraph 5 of the Declaration, the inventors declare that they “worked continuously” on the MTP Primitives Feature from its conception date at least as early as August 2, 1999 until the Feature was reduced to practice. Applicants respectfully submit that the inventors’ statement that they worked continuously on the Feature that

embodies claimed invention is evidence of due diligence and should have been given weight with regard to a finding of due diligence. Accordingly, reversal of the rejection is requested for this reason alone.

Moreover, Applicants submit herewith a Supplemental Declaration under 37 C.F.R. § 1.131 indicating that the claimed invention was actually reduced to practice in the United States at least as early as November of 1999, which is earlier than the 35 U.S.C. § 102(e) date of Fourcand (March 31, 2000).

In particular, the Supplemental Declaration attached to Applicants' Response under 37 C.F.R. § 1.116 filed concurrently herewith refers to a test plan and a weekly status report that indicate that testing of the MTP Primitives Feature, which embodies the claimed invention, was completed at least as early as November 1999. The testing was performed at Tekelec's offices in Morrisville, North Carolina. The testing was performed on a working version of the MTP Primitives Feature. Since the invention was actually reduced to practice prior to the 35 U.S.C. § 102(e) date of Fourcand, due diligence is irrelevant. (See 37 C.F.R. § 1.131(b).)

Entry of the attached Supplemental Declaration under 37 C.F.R. § 1.131 is requested because Applicants believed that paragraph 5 of their original Declaration filed on April 7, 2005 was sufficient to support a finding of due diligence in reducing the invention to practice. In other words, the filing of the Supplemental Declaration was necessitated by the Official Action dated July 27, 2005 indicating that the original Declaration under 37 C.F.R. § 1.131 was found by the Office to be defective. Accordingly, pursuant to 37 C.F.R. § 1.116(e) it is respectfully submitted that because Applicants have made a showing of good and sufficient reasons why the Supplemental Declaration was not earlier presented, entry of the Supplemental Declaration is respectfully requested.

Claim Rejections 35 U.S.C. § 103

As stated in Applicants' response to the previous Official Action, Fourcand has a 35 U.S.C. § 102(e) date of March 31, 2000. For the reasons stated above, Applicants have established a date of actual reduction to practice of the claimed invention at least as early as November, 1999. Accordingly, for this reason alone, it is respectfully

submitted that the rejection of the above-referenced claims as unpatentable over Glitho in view of Fourcand should be reversed.

Moreover, as stated in Applicants' response to the previous Official Action, Glitho fails to teach or suggest detecting a network management event regarding operating status of an SS7 node residing in the SS7 network, and, in response to the event, generating a data network management message indicating the operating status of the SS7 node and sending that message to nodes in a data network that adapted to communicate with the SS7 network. Rather, Glitho discloses a telecommunications management network **32** that sends operation and maintenance (O&M) messages to exchanges via an IP network. For example, Glitho states:

The telecommunications management network **32** communicates operation and maintenance with exchanges **14** via an interface commonly referred to as Q3. The Q3 operation and maintenance traffic is carried between each of the exchanges **14** in the telecommunications management network **32** by way of the data communications network **34** which in common practice utilizes a transmission control protocol/Internet protocol (TCP/IP) running on top of either a local area network (LAN) or wide area network (WAN). (See column 2, lines 52-63 of Glitho.)

From the above-quoted passage, rather than detecting network management event, generating a data network management message indicating the operating status of an SS7 node, and communicating the data network management message to nodes in a data network that are adapted to communicate with the SS7 network, Glitho teaches a telecommunications management network that sends operation and maintenance messages to the SS7 network. Operation and maintenance messages are messages that relate to provisioning of service within the SS7 network. (See column 1, lines 27-41 of Glitho.) Such messages have nothing to do with detecting network management events and communicating node status information to nodes in the data network as claimed. Accordingly, Glitho fails to teach or suggest the invention as claimed.

On page 2 of the Official Action dated July 27, 2005, the following is indicated:

The Examiner cannot find anywhere in the claim language "convey SS7 node operation status to IP nodes" or "including information of the operation status associated with the SS7 node."

Applicants respectfully direct the Panel's attention to element (a) of claim 1, which recites, "detecting a network management event regarding operation status of an SS7 node residing in the SS7 signaling network," element (b), which recites, "generating a data network management message indicating the operation status of the SS7 node," and element (c), which recites "sending the data network management messages to nodes in a data network that are adapted to communicate with the SS7 network." The claim language indicates that an SS7 network management event regarding the operating status of an SS7 node is detected and that a data network management message indicating that operating status is generated and communicated to the data network. Even though this language is not exactly the same language quoted above from the Official Action, these features are not disclosed, taught, or suggested by Glitho, because Glitho discloses sending messages relating to provisioning of telecommunications services from a telecommunications management network to the SS7 network. Messages relating to service provisioning sent from the management network to the SS7 network are distinct from messages carrying information indicative of SS7 node status to the data network for at least two reasons. First, messages relating to service provisioning as taught by Glitho do not contain SS7 node status information. Rather, such messages contain information used to provide telecommunications services, such as number portability service. Second, the service provisioning messages of Glitho travel from the management network to the SS7 network rather than to the data network as claimed.

On page 2 of the Official Action dated July 27, 2005, it is indicated that column 4, lines 15-41 and column 8, lines 1-65 of Fourcand disclose "detecting a network management event regarding operation of an SS7 node, generating a data network management message that includes SS7 point code status of the SS7 node, and sending the data network management message to specified nodes in the data network that are configured to communicate with the SS7 node." As a preliminary matter, Applicants note that Fourcand is irrelevant because Applicants have established actual reduction to practice of the claimed invention prior to the 102(e) date of Fourcand. Moreover, column 4, lines 15-41 and column 8, lines 1-65 of Fourcand do not disclose

the features asserted in the Official Action. For example, the only reference to SS7 messages in column 4, lines 15-41 of Fourcand occurs in the following passage:

SCLEs **83** are coupled via a mate link for fast fault detection and recovery. SS7 synchronization messages may be sent between SLCEs **83** over their associated mate link connection to allow SS7 link state machines to stay synchronized. Upon detection of an error on the active SCLE **83**, the standby SCLE assumes responsibility for processing the SS7 traffic without having a link failure. (Emphasis added.) (See column 4, lines 17-24 of Fourcand.)

The above-quoted passage from Fourcand refers to a synchronization procedure performed by endpoints of an SS7 signaling link. The SS7 synchronization messages are sent between SS7 nodes in the SS7 network to avoid link failure, rather than to communicate operational status to nodes in a data network as claimed.

Column 8, lines 1-65 of Fourcand referenced in the Official Action refer to MTP level 2 link alignment, MTP level 3 routing, and global title translation. MTP level 2 link alignment, MTP level 3 routing, and global title translation are SS7-exclusive procedures and have nothing to do with communicating SS7 node status information in response to an SS7 network management event to a node in the data network disclosed. Accordingly, for this additional reason, the rejection of the claims as unpatentable over Glitho in view of Fourcand should be reversed.

CONCLUSION


For the reasons set forth above, the rejection of claims 1, 2, 14, 15, 44, 47-49, and 55 as unpatentable over Glitho should be reversed.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: January 27, 2006

By: _____


Gregory A. Hunt
Registration No. 41,085
Customer No. 25297

1322/49/2 GAH/sed